

IOWA DEPARTMENT OF NATURAL RESOURCES ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

**DIAL – WC ESTATES, LLC;
Woodbury County, Iowa**

**ADMINISTRATIVE CONSENT ORDER
NO. 2008-WW-06**

**TO: Ted Brown
Dial – WC Estates, LLC
11506 Nicolas St
Ste 200
Omaha NE 68154**

I. SUMMARY

Pursuant to this Administrative Consent Order (Order), Dial – WC Estates LLC hereby agrees to comply with all storm water discharge permit requirements for the development known as Whispering Creek Estates in Sioux City, Iowa and to pay a penalty of **\$8,000**.

NOTE: As a developer/permit holder, Dial – WC Estates LLC is responsible for on-going compliance for the duration of a development project, including individual lot developments, unless you transfer responsibility as provided in 567 Iowa Administrative Code (IAC) 64.6(6).

Any questions regarding this Order should be directed to:

Relating to technical requirements:

Tom Roos
Field Office #3
1900 North Grand
Spencer, Iowa 51301
Ph: 712-262-4177

Relating to this Order:

Jon C. Tack
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515-281-8889

Payment of penalty to:

Iowa Dept. of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034

II. JURISDICTION

This Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or permits issued pursuant thereto; and Iowa Code section 455B.109 and 567 IAC chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

1. Dial – WC Estates, LLC is engaged in the construction of a residential development known as Whispering Creek Estates. Located at 1481 Whispering Creek Drive, in Woodbury County, Iowa. The site consists of approximately 76 acres. Dial – WC Estates, LLC obtained coverage under the Department's General Permit #2 for storm water discharge on October 6, 2006 and was assigned identification no. IA-12591-12379.

2. On March 31, 2007, the Department received a complaint alleging a lack of adequate erosion control measures at the Whispering Creek Estates site. The complainant alleged that silt fences at the site were full and silt was leaving the property and being deposited onto the neighboring golf course.

3. On April 3, 2007, the Department received another complaint alleging sediment control violations at the Whispering Creek Estates site and silt leaving the site.

4. On April 6, 2007, the Department inspected the Whispering Creek Estates site. Violations observed on that date included a failure to maintain erosion and sediment control structures, off-site tracking of dirt, failure to protect storm sewer intakes from sediment inundation, and failure to prevent the discharge of sediment off the construction site. It was observed that both of the sediment control basins at the site were filled with sediment. A significant amount of sediment was discharging from the east basin to the ponds on the neighboring golf course. The dike had been breached on the west basin and sediment-carrying water was passing directly through the basin to the golf course. Silt fences on the site were undercut or knocked down. Inspection at the site had been performed by Brian Mastbergen of DGR & Associates. Due to the failure of the sediment retention systems, modifications had been made to the Storm Water Pollution Prevention Plan but those changes had not been implemented as of April 6th. On this date, the Department advised representatives of Dial – WC Estates, LLC of additional storm water control measures that were necessary to control sediment, including the use of multiple-row silt fencing.

5. On April 23, 2007, a Notice of Violation was issued to Dial – WC Estates, LLC due to the violations documented on April 6, 2007.

6. On April 24, 2007, the Department received a complaint alleging that sediment from the Whispering Creek Estates site was filling adjacent ponds and wetlands.

7. On April 24, 2007, the Department inspected the Whispering Creek Estates site. It was observed that a significant amount of sediment was running from the top of the development into the sediment basin. The basin was full of sediment and no longer providing adequate settling prior to discharging from the standpipe. The discharge from this structure leads to the ponds and wetlands on the neighboring golf course. The water discharging from the outfall was a light chocolate color due to the heavy sediment content. On the northeast side of the development, sediment-laden water was observed to be flowing over the top of a single row of

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silt fencing and crossing the golf course property to enter a pond. Additional rows of silt fencing had not been added as advised by the Department on April 6th. Near the entrance to the site, along Whispering Creek Drive, sediment-laden storm water was running through the rock check structures, down the street, and into the storm sewer. This storm sewer discharges to a storm water detention pond near the entrance of the Castle Gate Development. This storm water detention pond was observed to be overflowing and discharging to Farmers Ditch, a tributary of East Morningside Creek.

Samples of the storm water leaving the site were taken at two locations. Based upon laboratory analysis, Total Suspended Solids in the two samples were determined to be 11,000 mg/l and 550 mg/l, respectively. Photographs of the site were taken.

8. A Notice of Violation was issued to Dial – WC Estates, LLC on May 7, 2007.

9. On August 23, 2007, the Department inspected the site. The inspection was performed in response to a complaint alleging that silt had been washed from the site and deposited on the neighboring golf course. The ponds on the golf course property were observed to be very turbid due to runoff from the Whispering Creek site. It appeared that the source of the runoff was from the small storm water basin that was constructed along the east side of the site. This basin receives water from several storm sewer intakes. The intakes were not adequately protected allowing a considerable volume of silt to enter the storm water system. A similar situation was observed in the northwest and west storm water basins. The extreme west basin was full of sediment and had overflowed down the side slope into a golf course pond. These basins do not provide adequate detention time and allow a considerable amount of sediment to leave the property. Many of the silt fences on the property were observed to be undercut and knocked down, causing a large amount of sediment to move onto the golf course. Photographs were taken.

IV. CONCLUSIONS OF LAW

The Department and Dial –WC Estates, LLC agree that the following Conclusions of Law are applicable to this matter:

1. Iowa Code section 455B.173(3) authorizes the Environmental Protection Commission (Commission) to adopt rules relating to the operation of and issuance of permits to waste disposal systems. Iowa Code section 455B.103A authorizes the issuance of general permits for stormwater discharges. The Commission has adopted regulations pertaining to the issuance of National Pollutant Discharge Elimination System (NPDES) permits for stormwater discharge, at 567 IAC 60.2 and 64.3 through 64.16. Pursuant to rule 60.2, "Storm water discharge associated with industrial activity" means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. Number 10 under this definition includes "construction activity" including clearing, grading and excavation activities except operations that result in the disturbances of less than 1 acre of total land area which are not part of a larger common plan of development or sale.

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2. Subrule 64.4(2) provides that the Director may issue general permits which are consistent with 64.4(2)"b" and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities: (1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992). Subrule 64.15(2) adopts Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. Subrule 64.6(2) provides that upon the submittal of a complete Notice of Intent in accordance with 64.6(1) and 64.3(4)"b," the applicant is authorized to discharge, unless notified by the Department to the contrary. Subrule 64.3(1) provides that no person shall operate any wastewater disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the Director.

3. General Permit No. 2, Part IV, provides that the permittee must develop and implement a "pollution prevention plan" in accordance with good engineering practices to prevent and reduce the amount of pollutants in storm water runoff. Specific stabilization and structural practices appropriate to the site and activities must be identified and implemented as part of the plan. Plans must be updated to address changes in a facility's design and operation, and must be modified to address deficiencies noted by the Department.

V. ORDER

The Department hereby orders and Dial – WC Estates, LLC hereby agrees to:

1. Comply with all storm water permit requirements including the installation and maintenance of such additional storm water discharge control measures as to prevent further unauthorized discharges of sediment from the site; and
2. Pay a penalty of \$8,000 within 30 days of the execution of this Order.

NOTE: As a developer/permit holder, you are responsible for on-going compliance for the duration of a development project, including individual lot developments, unless you transfer responsibility as provided in 567 IAC 64.6(6).

VI. PENALTY

1. Iowa Code sections 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. Criminal sanctions are also provided for discharge violations.

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2. Iowa Code Section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order at this time with a penalty. The penalty assessed by this Order is determined as follows:

a. Economic Benefit. Dial – WC Estates, LLC has achieved significant cost savings by failing to implement, inspect, repair and maintain pollution prevention measures. Based upon these factors, the multiple days of violation, and the agreement of the parties, \$3,000 is assessed for economic benefit.

b. Gravity of the Violations. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil penalties are authorized by statute in this case. The Department has determined that the most effective and efficient means of addressing the above-cited violations is with administrative penalties, which are much lower than those that could be obtained through court action. Sedimentation of Iowa's waterways is a serious problem, and the regulatory agencies have recognized that uncontrolled runoff from construction sites is a significant contributor to these problems. It is not necessary to document a specific water quality impact from a specific site. The storm water permit program requires that best management practices be implemented at all regulated sites, and where construction is initiated without the necessary permits, it threatens the integrity of the program and thwarts achievement of state-wide water quality goals. Based upon these factors, the multiple days of violation, and the agreement of the parties, \$3,000 is assessed for the gravity of the violations.

c. Culpability. Dial – WC Estates, LLC is engaged in the business of construction and property development. As a company engaged in this business, it has a heightened obligation to be aware of the applicable regulations. The refusal to comply after repeated notice constitutes a willful refusal to comply. Based upon these factors, the multiple days of violation, and the agreement of the parties, \$2,000 is assessed for the culpability of Dial-WC Estates, LLC.

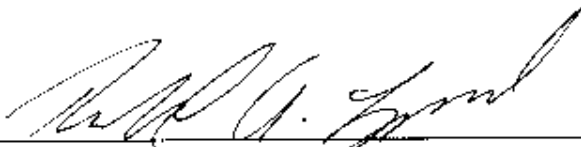
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175(1) and 561 IAC 7.5(1), as adopted by reference at 567 IAC chapter 7, authorize a written notice of appeal to the Commission. This Order is entered into knowingly by and with the consent of Dial – WC Estates, LLC. By signature to this Order, all rights to appeal this Order are waived.

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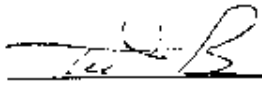
VIII. NONCOMPLIANCE

Compliance with section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.



RICHARD A. LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 13 day of
March, 2008



DIAL – WC ESTATES, LLC

Dated this 3rd day of
March, 2008

Field Office #3; Jon Tack; Joe Griffin; I.C.7.b